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**From:** McDavit, Michael W. [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4CB54848E7F641BF90E7CBBFEDB28971-MICHAEL W. MCDAVIT]  
**Sent:** 10/3/2017 4:37:30 PM  
**To:** Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]  
**CC:** Libertz, Catherine [Libertz.Catherine@epa.gov]  
**Subject:** Fwd: Proposed changes to WI legislation: Assumption and NMST  
**Attachments:** 17lr4115.pdf; ATT00001.htm

For biweekly and potentially OW staff.

Sent from my iPhone

Begin forwarded message:

**From:** "Hurl, Kathy" <Hurl.Kathy@epa.gov>  
**Date:** October 3, 2017 at 12:10:04 PM EDT  
**To:** "McDavit, Michael W." <McDavit.Michael@epa.gov>  
**Subject:** **Proposed changes to WI legislation: Assumption and NMST**

WI law changes... proposed and enacted:

Assuming the CWA 404 program:

- The Wisconsin (WI) legislature has developed and is soliciting co-sponsorship of a state bill which would grant the WI Department of Natural Resources authority to submit an application to assume the Section 404 program, under the Governor's authority. (WI LRB 4115/4410. Attached)
- This bill also requires the state to expedite ILF program spending. Note: if the state assumes the program we would need to look at these changes for consistency with timing and statutory and regulatory requirements.
- This bill would repeal state authority to regulate non-WOUS wetlands. Note: WI was the first state to pass legislation to specifically "fill the gap" and regulate isolated wetlands post SWANCC. The bill still requires mitigation for discharges to these non-waters of the US wetlands, but it is unclear how the state could require mitigation without a permit application notifying them of the activity.
- While EPA is ready and willing to assist the state if interested in assuming the program, some proposed legislation being considered would create a challenge to the state's effort. See below.

Although a full analysis would need to be undertaken, other bills currently being considered and recent statutory changes made by the WI legislature are potentially inconsistent with the requirements to assume the program. These include:

- WI 2017 SB 395 (LRB 2652, see also 2017 AB 499): The proposed legislation addresses non-ferrous metallic mining activities, modifying the review standards and criteria for groundwater and wetlands, and truncating the review timeline to 180 days.
  - Status: Introduced in late August, and is in committee, a public hearing was held in September.

- Issue: The timeline proposed may not allow sufficient time for federal review.
- WI 2017 AB 246 (LRB-0475, see also 2017 SB 177): The bill proposes changes to the state statute and creates new exemptions for the drainage districts including:
  - exempting repairs, enlargement, or maintenance of drainage districts "drains" (these are ditches).
  - exempting districts from WQC and state permit requirements to deposit dredged material into WOUS associated with these activities.
  - Status: Introduced in April, and remains in committee.
  - Issue: If this bill is enacted and the state seeks to assume the CWA 404 program, this statute would need to be amended to narrow the state exemptions to be consistent with the 404(f) exemptions.
- WI 2017 SB 406 (LRB-3174, see also 2017 AB 497): The bill proposes changes to state wetland law in Chapter 281.36. Changes include:
  - prohibiting the state from requiring compensatory mitigation for any public utility unless the discharge authorized will result in a permanent fill of more than 10,000 square feet of wetland.
  - Status: Introduced in September, and was referred to committee.
  - Issue: Could result in inconsistency with the requirements of the (b)(1) guidelines and thus pose a challenge for assumption.
- WI 2018 state budget: As part of the state operating budget, the legislature inserted language providing for an exemption in the state's authority to regulate bank stabilization. Effective immediately, Chapter 30.12 (1g) (jm) was amended to eliminate state regulation (including WQC) of placement of riprap up in non-wetland waters for up to 200 linear feet inland and 300 linear feet in the Great Lakes (waterward reach up to 8 feet below OHWL, and 3 feet above OHWL). Note: Integrated bank treatments, riprap in ASNRI (Areas of Special Natural Resource Interest) waters, and riprap in excess of the LF restrictions continue to be eligible for state authorization.
  - Issue: this exemption is not consistent with the 404(f) exemptions and would need to be amended for riprap placed in waters of the US not retained by the USACE.